IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Case No. **R.S.A No. 119 of 1981**

Date of decision : July 20, 2006.

Gian Chand and others ... Appellant

Versus

Ram Chand ... Respondent

Present: Mr. Sarwan Singh, Sr. Advocate
with Mr. A.S.Parmar, Advocate
for the appellant.

Mr.G.S.Jaswal, Advocate
for the respondent.

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RANJIT SINGH, J

This RSA and RSA No.118 of 1981 have been heard together.

This is a case where brother had sold share of land of his brother to his own son on the basis of Power of Attorney got executed in dubious manner. In RSA No.118 of 1981, mentioned above,the same brother had sold the house of the same brother Ram Chand to his own wife on the basis of Power of Attorney which was found to have not been executed.

Ram Chand, respondent had filed suit against his brother Gian Chand for joint possession of land measuring 9 Kanal 13 Marla being 1/2 share belonging to him. Respondent-plaintiff claimed that he was owner of 1/2 share of land mentioned above of which he had been forcible dispossession about a month prior to the filing of the suit by appellants-defendants no.2 to 5. It was the case of the appellants-defendants that they had purchased this land from appellant-defendant no.1. On the other hand, Ram Chand (respondent-plaintiff) had

claimed that appellant-defendant no.1 had no right to sell the share belonging to him. It was also alleged that appellant-defendant no.1 had got a Will executed from the respondent-plaintiff which he later on cancelled. The sale deed got executed by appellant-defendant no.1 was accordingly described as forged and fabricated document. It was also claimed that appellant-defendantno.1 had no authority to sell share of the respondent-plaintiff. Appellant-defendants when summoned in this suit, only appellant-defendant no.2 contested the same. He filed written statement and raised various preliminary objections. On merits, it was contended that the suit land had been purchased by appellant nos. 2 to 5 through appellant-defendantno.1 vide registered sale deed dated 27.5.1974. It was, accordingly, claimed that on the basis of this sale deed,concerned appellant-defendants were the owner in possession of the suit land. On these pleadings, the suit was tried on the following issues :-

1. Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD
2. Whether the sale deed dated 27.5.74 executed by defendant No.1 in favour of defendant No.2 to 5 is void ? OPP
3. Whether the suit in the present form is not maintainable ? OPD
4. Relief.

Two additional issues were subsequently framed regarding execution of alleged Will by respondent-plaintiff in favour of appellant-defendant.-

These two additional issues were, however, given up as it was found that the alleged Executor of the Will was still alive. It was thus found that there was no requirement to pronounce the finding on the issue relating to the execution of the Will. Since it was claimed that the Will had been cancelled , the same was found sufficient to annul the document, i.e. the Will alleged to have been executed.

The remaining issues were hotly contested between the parties. The issue relating to valuation was decided in favour of the respondent-plaintiff.

While contesting the finding on issue no.2, it has been submitted that the sale deed was got executed by an attorney which was given by the respondent-plaintiff. The sale deed through attorney was otherwise proved, as was claimed. The trial Court examined the issue relating to Power of Attorney in two aspects. The trial Court first proceeded to decide if assertion of the respondent-plaintiff in denying the execution of the Power of Attorney was established or not. The second issue on this aspect related to validity of this Power of Attorney to get the sale deed registered in favour of the appellant-defendants. The original Power of Attorney had been placed on record. This attorney had marginal witness Ujagar Singh, who was examined as DW-1. He was a resident of Delhi. Another witness, namely, Karnail Singh, had also statedly signed as a witness on this attorney. The respondent-plaintiff had denied the fact that he had thumb marked this attorney. The same was, accordingly, got examined from the finger print expert. It was found that this attorney contained thumb impression of respondent-plaintiff . Having so decided, the trial Court proceeded further to decide the second aspect which was crucial to the determination of the case. By making a reference to the provisions of Section 32 of the Registration Act, it was noticed that only prescribed person can present the document for registration and sub-section (c) to Section 32 was noticed which was as under :-

> " by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned."

The trial Court also noticed that words duly authorized by power of attorney were elucidated under Section 33 of the Act which were as follows:-

> " 33(1) For the purpose of Section 32, the following powers of attorney shall alone be recognized, namely :-
>
> (a) if the principal at the time of execution of the power of attorney resides in any part of India in which this Act is for the time

being in force, a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides. "

It was, accordingly, noticed that as per Section 33(1)(a) valid power of attorney is authorized to execute the sale deed. Noticing the contents of Section 33 of the Registration Act, the trial Court proceeded to find if respondent-plaintiff, Ram Chand was resident of Delhi as this Power of Attorney had been executed at Delhi whereas the respondent-plaintiff belonged to village Kandhala Sheikhan where the property was also situated. On the basis of the evidence, it was found that this Power of Attorney was scribed by an Advocate at Delhi. This was witnessed by one son of Gian Singh, brother of the respondent-plaintiff. The second witness, namely, Ujagar Singh was neighbourer of said Gian Singh at Delhi. It was pleaded that the respondent-plaintiff used to reside at Delhi with his brother Gian Singh. Having regard to the evidence of Ujagar Singh, the Court came to the conclusion that he even did not know Ram Chand, respondent-plaintiff. Ram Chand had himself appeared as a witness and denied the plea that he was residing at Delhi. Even before the Sub-Registrar, he had recorded his address as of village Kandhala Sheikhan.

In another RSA No. 118 of 1981, an identical issue was agitated between the same parties and has been decided by the Courts below. There also the issue related to interpretation of Section 33(1)(a) of the Registration Act. In this case the trial Court as well as the first Appellate Court had held that Power of Attorney for sale of property was required to be registered at a place where the principal resides. It was also observed that the sale deed executed on the basis of General Power of Attorney was compulsorily to be registered and could be presented for registration by an agent duly authorized by the attorney. As per Section 33(1)(a), such Power of Attorney must be registered by a Registrar or Sub-Registrar within whose district or sub-district the principal resides and further that

no other Power of Attorney was to be recognized. Reliance in this regard was placed on the judgment of Privy Council _____AIR 1914 PC 16-18. In this case it was observed that the mandatory provisions have been made to save the innocent public from fraud by providing that no other Power of Attorney was to be recognized. This issue would arise in the present appeal as well. In the present appeal also the Attorney had been given by respondent-plaintiff, Ram Chand to his brother Gian Singh, who had executed the sale deed. This Power of Attorney had also been registered at Delhi and it was witnessed by the same persons as was the Attorney in the case referred to above i.e. RSA No. 118 of 1981. The counsel for the appellant argued that respondent-plaintiff was temporarily residing at Delhi which was sufficient to clothe the Registrar at Delhi to enter the Attorney in view of provisions of Section 33(1)(a). The trial Court, in my view, rightly found that the parties belong to village Kandhala Sheikhan and only one of the brother lived at Delhi. Respondent-Ram Chand did not have any residence at Delhi and he had just visited his brother casually. This could not be called a temporary residence of respondent-plaintiff. It was found that respondent-Ram Chand was primarily resident of village Kandhala Sheikhan and had been taken to Delhi only to grab property and to get the Power of Attorney executed and it was so got executed at Delhi.

Section 33 (1) (a) clearly provides that for the purpose of this Section, the Power of Attorney, as mentioned therein, shall not be recognized and it provide " if the principal at the time of executing the power of attorney resides in any part of British India in which this act is for the time being in force, a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-district the principal resides." It is, thus, clear that merely holding of a Power of Attorney would not be enough to entitle the Attorney holder to present the sale deed for registration on behalf of the principal. In all such cases, the sale deed could be presented for registration on behalf of the

principal if the principal at the time of executing the Power of Attorney was residing within the District or Sub-District where the said Power of Attorney was executed. In the present case, as such, Gian Singh was not competent to present this sale deed before the Sub-Registrar at Dasuya. This Power of Attorney, as such, did not authorize Gian Singh to present the sale deed on behalf of respondent-plaintiff as it was hit by Section 33(1)(a) of the Registration Act. Even otherwise, the counsel could not justify the conduct of either the appellant or said Gian Singh for getting the sale deed executed. The sale deed executed, as such, had rightly been held to be invalid for want of proper registration. It is also required to be noticed that Gian Singh, appellant had executed the sale deed in favour of his own sons. To my mind, this appears to be a case of fraud. Gian Singh had apparently deceived his innocent brother in getting this Power of Attorney executed and was not rest content with that only but went ahead to sell the share of land of his brother to his own son. Not only that, as noticed in RSA No. 118 of 1981, he had sold the house in favour of his wife. One of his son had appeared as a witness in this Attorney. As already noticed, one of the attesting witness who was a neighbourer of Gian Singh and he even did not know the respondent-plaintiff. Having regard to all these factors, it is clear that this Power of Attorney could not give any valid right to appellant, Gian Chand to sell the property or to present the sale deed. This issue has rightly been decided in favour of the respondent-plaintiff and against the appellant. I do not find any justifiable reason to interfere in the finding of the trial Court as well as first Appellate Court on this score. Accordingly, I would dismiss this appeal with costs which are assessed at Rs.5,000/-.

(RANJIT SINGH)
JUDGE

July 20, 2006

RS